

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
GARTH DUVAL )  
d.b.a. DUVAL & SON, )  
Appellant, )  
v. )  
OLYMPIC AIR POLLUTION )  
CONTROL AUTHORITY, )  
Respondent. )

PCHB No. 751

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

A formal hearing on the appeal of Garth Duval d.b.a. Duval & Son to the imposition of a civil penalty in sum of \$100.00 for an alleged smoke emission violation came on before Board members W. A. Gissberg (presiding), Chris Smith and Walt Woodward on February 18, 1975 in Lacey, Washington.

Appellant appeared pro se; respondent appeared by and through its attorney, Fred D. Gentry.

Having heard the testimony and considered the exhibits and being fully advised, the Board makes the following

FINDINGS OF FACT

I.

Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3rd Ex. Sess., has filed with this Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto.

II.

Appellant owns and operates an alder mill business and burns the wood-waste therefrom in its burner at or near Oakville, Grays Harbor, Washington.

III.

On July 23, 1974, respondent issued a warning citation for an alleged violation by appellant of respondent's Section 10, Regulation I. The warning was personally delivered to appellant, Garth Duval, and at that time Mr. Duval obtained the belief (from his conversation with respondent's inspector) that the issuance of the warning citation would make appellant's operation "legal" and that it constituted permission to continue appellant's burning operations. Appellant did not read the warning citation. Nonetheless, on August 5, 1974 appellant wrote to respondent and indicated that although market and economic conditions forced the closure of appellant's mill operations, "it would seem quite within the realm of probability that on a continuous operating basis, we could bring ourselves within compliance standards by late 1975" (Respondent's Exhibit 4). Respondent's written answer on August 15, 1974 was received by appellant. That communication advised appellant that:

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1 ". . . A Compliance Schedule program gives immunity to  
2 enforcement, however, this is the situation only after such  
3 a program is adopted by the Board at a public hearing. The  
time between your submission of a schedule to the adoption  
of a schedule is no less than 40 days. . . ."

4 On September 20, 1974 respondent's inspectors observed smoke  
5 emissions from appellant's waste wood burner which emissions were in  
6 excess of 15 minutes continuous duration between 1:30 p.m. and 3:15 p.m.  
7 and which smoke emissions were of a shade darker than No. 2 on the  
8 Ringelmann Chart, namely, ranging between Ringelmann No. 3 to Ringelmann  
9 No. 4, but never lower than Ringelmann No. 3. Respondent issued its  
10 notice of violation followed by its notice of civil penalty in the  
11 amount of \$100.00 to which appellant appealed to this Board.

12 IV.

13 Section 10.01 of respondent's Regulation I governs the emissions  
14 from waste-wood burners and makes it unlawful to cause or allow the  
15 emissions to the outdoor atmosphere for more than 15 minutes in any  
16 consecutive eight hours of a gas stream containing air contaminants  
17 which are darker in shade than that designated as No. 2 on the  
18 Ringelmann Smoke Chart.

19 V.

20 On September 23, 1974, appellant submitted a proposed compliance  
21 schedule to respondent and a compliance schedule was adopted by  
22 respondent for appellant's operations in November, 1974. In October,  
23 1974, appellant shut down his mill because of market conditions.

24 VI.

25 Any Conclusion of Law hereinafter recited which should be deemed  
26 a Finding of Fact is hereby adopted as such.

27 From which comes these

FINAL FINDINGS OF FACT,

S F No 9923-A

CONCLUSIONS OF LAW AND ORDER

CONCLUSIONS OF LAW

I.

Appellant was in violation of Section 10.01 of respondent's Regulation I.

II.

While appellant could have been misled as to the legal implications of the warning which he received on July 23, 1974, any misunderstanding on his part was clearly eliminated by respondent's letter to him dated August 15, 1974. It was after that date that the violation which is the subject of this appeal occurred.

III.

Air pollution is a matter of serious concern to the citizens of this state and one which adversely effects the public health. Consider g all of the circumstances of this case, we cannot say that the civil penalty was unreasonable.

IV.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From which follows the Board's

ORDER

The appeal is denied and the civil penalty affirmed.

DONE at Lacey, Washington this 25th day of February, 1975.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith  
CHRIS SMITH, Chairman

W. A. Gissberg  
W. A. GISSBERG, Member

Walt Woodward  
WALT WOODWARD, Member

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